

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**Frye Property Management, LLC  
Webster County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2010-AQ- 37

TO: Dayle Frye, Registered Agent  
1923 5th Ave. S.  
Fort Dodge, IA 50501

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Frye Property Management, LLC (Frye Property Management) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) and solid waste disposal violations in connection with improper insulation removal at the Fort Dodge Federal Building in Fort Dodge, Iowa.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Tom Wuehr, Air Quality Bureau  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-7212

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant

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to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

Frye Property Management neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. On March 20, 2009, DNR's Air Quality Bureau received a complaint alleging that renovation was being conducted at the former Federal Building, 205 South 8<sup>th</sup> Street, Fort Dodge, Webster County, Iowa. The complainant also indicated that asbestos containing material was possibly being improperly removed from the boiler room. Two men were alleged to have emerged from the boiler room area completely covered in white dust.

2. On March 24, 2009, Tom Wuehr, Air Quality environmental specialist, investigated the complaint. Mr. Wuehr determined the building was owned by Frye Property Management. Mr. Wuehr visited the boiler room for the former Federal Building, where he observed disturbance and damage of suspect material, including debris and material from two boilers that had been largely stripped of the insulating jackets. Mr. Wuehr collected dry samples from the renovation debris for testing.

3. Based upon his findings above, Mr. Wuehr informed Mr. Frye that no one should be in the building until it was determined if the suspect material contained asbestos or not, which Mr. Frye agreed to. Mr. Wuehr discovered through the conversation with Mr. Frye that there had been no notice, inspection or abatement prior to the renovation, and the boiler jackets had been stripped by two salvagers.

4. On March 30, 2009, DNR received the asbestos sample results. The sample indicated regulated amounts of asbestos, specifically 7% chrysotile asbestos.

5. On March 30, 2009, DNR issued a Notice of Violation letter to Frye Property Management. The letter cited the following violations: failure to inspect for asbestos; failure to notify DNR prior to the renovation activity; failure to implement NESHAP emission control procedures; failure to keep the asbestos adequately wet; failure to retain a trained supervisor for the boiler jacket removals; and failure to properly wet and seal all asbestos containing waste. The letter required Mr. Frye to have the building inspected and cleaned by an abatement company within 21 days of receipt of the letter.

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6. On April 23, 2009, Mr. Wuehr visited the Federal Building in Fort Dodge and a representative from the abatement company was at the site. Mr. Wuehr toured the facility with him. Mr. Wuehr affirmed that the site had been cleaned and tested for asbestos contamination by the asbestos abatement company.

**IV. CONCLUSIONS OF LAW**

Frye Property Management neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR 61, subpart M.

2. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. The facts in this case indicate no inspection was performed before renovation began. The above facts demonstrate non-compliance of this provision.

3. 40 CFR 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation. The specific requirements for notification are contained in the subsection. Proper and timely notification was not given by Mr. Frye prior to the renovation of the Federal Building. The above facts demonstrate noncompliance with this provision.

4. 40 CFR 61.145(c) details the procedure for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The above facts demonstrate noncompliance with this provision.

5. 40 CFR 61.145(c)(1) states that the owner or operator of a demolition or renovation shall remove all regulated asbestos containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material. The facts in this case indicate that the regulated asbestos containing material was not removed prior to renovation of the building. The above facts demonstrate noncompliance with this provision.

6. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately

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wet and shall remain wet until collected and contained. The facts in this case indicate that the demolition debris was dry. The above facts demonstrate noncompliance with this provision.

7. 40 CFR 61.145(c)(8) provides that "[e]ffective 1 year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained the provisions of this regulation and the means of complying with them, is present." The facts of this case indicate that the required trained supervisor was not on site during the renovation of the federal building. The above facts demonstrate noncompliance with this provision.

8. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that after all asbestos containing material is wet, it must be sealed in leak-tight containers while still wet; or, for materials that will not fit into containers without additional breaking, materials must be put into leak-tight wrapping. The facts in this case indicate that the renovation debris was not properly sealed in a leak-tight container and it was dry. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, DNR orders and Frye Property Management agrees to do the following:

1. Frye Property Management shall conduct all future renovation and demolition projects in compliance with the asbestos NESHAP regulations; and

2. Frye Property Management shall pay a \$7,500.00 administrative penalty in accordance with the following payment plan. If any of the payments are not made in accordance with the payment plan, the remaining penalty shall be due immediately.

\$625.00 due August 1, 2010;	\$625.00 due February 1, 2011;
\$625.00 due September 1, 2010;	\$625.00 due March 1, 2011;
\$625.00 due October 1, 2010;	\$625.00 due April 1, 2011;
\$625.00 due November 1, 2010;	\$625.00 due May 1, 2011;
\$625.00 due December 1, 2010;	\$625.00 due June 1, 2011;
\$625.00 due January 1, 2011;	\$625.00 due July 1, 2011.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this

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matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$7,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit – Frye Property Management has gained an economic benefit by failing to comply with the asbestos NESHAP regulations. Frye Property Management has delayed the cost of completing an asbestos inspection and has avoided asbestos abatement costs prior to the renovation. 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” DNR has made a reasonable estimate on the overall economic benefit of the noncompliance. A conservative estimate of the size of the boiler jackets that were removed would be at least 300 square feet. A standard estimate for boiler jacket removal, including setting up containment, negative air, air monitoring, trained labor, and landfill fees, would conservatively cost \$40.00 per square foot times 300 square feet totaling \$12,000.00. However the DNR has made a determination to handle this matter administratively. Therefore a reduced estimate of \$4,000.00 is being assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Asbestos, in particular, has been known to cause cancer and is a hazardous air pollutant. Failure to follow proper procedures to remove and dispose of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers. The unknown whereabouts of 300 square feet of 7% asbestos containing material and the heavy contamination exposure to the two salvagers and boiler room during the removal lend weight to the gravity of the violations. Based on the above considerations, \$3,000.00 is assessed for this factor.

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Culpability – Frye Property Management has a duty to remain knowledgeable about the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. Based on the above considerations, \$500.00 is assessed for this factor.

**VII. APPEAL RIGHTS**

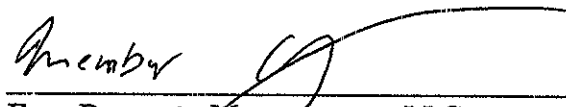
This administrative consent order is entered into knowingly by and with the consent of Frye Property Management. For that reason, Frye Property Management waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 9 day of  
August, 2010.

  
\_\_\_\_\_  
Frye Property Managementn LLC

Dated this 7/26/ day of  
\_\_\_\_\_, 2010.

Barb Stock (no asbestos number); Kelli Book; Tom Wuehr, Air Quality; EPC; VII.C.4